

EX PARTE OR LATE FILED

ORIGINAL

WILEY, REIN & FIELDING

1776 K STREET, N. W.  
WASHINGTON, D. C. 20006  
(202) 429-7000

DOCKET FILE COPY ORIGINAL

DONNA COLEMAN GREGG  
(202) 429-7260

FACSIMILE  
(202) 429-7049

April 8, 1994

RECEIVED

APR 11 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Notification of Permitted Written Ex Parte  
Presentation in MM Docket Nos. 92-266

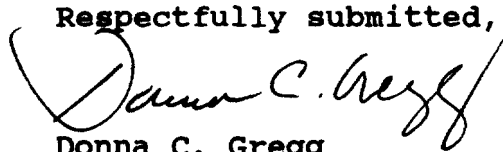
Dear Mr. Caton:

Discovery Communications, Inc., by their attorneys and pursuant to Section 1.1206(a)(1) of the Commission's rules, hereby submits two copies of this memorandum regarding a permitted ex parte presentation to Commission officials regarding MM Docket No. 96-266.

Today at 2:00 p.m., Barbara Wellbery, Vice President, Deputy General Counsel of Discovery Communications, Inc., Bill Goodwyn, Vice President, Eastern Division, Affiliate Sales and Relations, Discovery Networks; Maurita Coley, Vice-President, Legal Affairs, Black Entertainment Television, along with Donna C. Gregg of Wiley, Rein & Fielding, met with Mark Bollinger, JoAnne Lucanik, Karen Kosar, John Norton and Jeff Steinberg of the Cable Services Bureau Staff. The discussion related to issues in Exhibit 1 hereto in the cable rate regulation docket cited above.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

  
Donna C. Gregg  
Counsel for Discovery  
Communications, Inc.

cc: Mark Bollinger, Esq.

No. of Copies rec'd One  
List ABCDE

Exhibit 1

DUPLICATE

MAR 10 5 10 PM '94

March 9, 1994

CABLE 111-113

Alexandra M. Wilson  
Acting Chief  
Cable Services Bureau  
Federal Communications Commission  
Washington, DC 20554

Dear Ms. Wilson:

Discovery Communications, Inc. ("Discovery"), owner of The Learning Channel (a qualified educational programming source for purposes of Section 76.977(c) of the Commission's rules), and Black Entertainment Television, Inc. ("BET"), (a qualified minority programming source for purposes of Section 76.977(b)), hereby seek confirmation of their interpretation of §76.977(a) of the Commission's rules. That rule implements Section 612(i)(1) of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"), 47 U.S.C. §532(i)(1), which permits a cable operator to carry minority or educational programming from a "qualified" programming source that meets certain statutory standards of eligibility, as a substitute for up to one-third of the channels that the operator otherwise would have to set aside for commercial leased access. For the reasons set forth below, Discovery and BET believe that the intent of both Congress and the Commission was that qualified educational or minority programming used in substitution for a commercial leased access channel must be offered as part of basic or expanded basic service.

The legislative history of Section 612(i)(1), makes plain that its purpose "to increase the amount of educational and public programming offered by cable companies," so that such positive programming would be "available to everyone and be as accessible as possible." 138 CONG.REC. H6554 (daily ed. July 23, 1992) (Statement of Rep. McMillen). It is also clear that Congress released channels mandated for leased access only to advance an objective it viewed as equally compelling -- increasing the availability of minority and educational programming.<sup>1</sup> The House Energy and Commerce Committee noted

---

<sup>1</sup> In the Report and Order accompanying adoption of the implementing regulation in question, the Commission stated a general policy that placement of commercial leased access channel should be determined "bearing in mind the nature of the services  
(continued...)"

Alexandra M. Wilson  
March 9, 1994  
Page 2

that such programming "would contribute greatly to the diversity of programming available to cable viewers and will help assure the widest possible diversity of information services to the public. "H.R.Rep. No 628, 102d Cong., 2d Sess. at 122(1992). If this important class of programming is relegated to a la carte distribution or to a tier, either of which has demonstrably and significantly lower subscriber penetration than distribution on basic or enhanced basic tiers, its use as a substitute for commercial leased access will not fulfill the purpose Congress intended.

As providers of qualified educational and minority programming that can be used as substitutes for commercial leased access channels, Discovery and BET currently are involved in negotiations with a number of cable operators concerning carriage. Accordingly, Discovery and BET respectfully request confirmation, at your earliest possible convenience, of the understanding of this provision as outlined above. Specifically, we request your confirmation that in order for the commercial leased access capacity requirement to be reduced by substitution of qualified minority or educational programming, the substitute

---

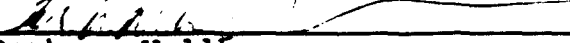
<sup>1</sup>(...continued)  
being offered." See Report and Order and Further Notice of Proposed Rulemaking in MM Docket 92-266, FCC 93-177 (May 3, 1993) at ¶498. This statement implicitly recognizes that placing a pay service on a basic or cable programming service tier would not be appropriate. Similarly, when more widespread distribution is essential to the nature of the service, offering the service on an a la carte channel or package would not be appropriate. Discovery and BET believe this is the case with qualified educational and minority programming as well.

Alexandra M. Wilson  
March 9, 1994  
Page 3


programming must be made available as part of either basic or expanded basic cable programming service.

Respectfully submitted,

DISCOVERY COMMUNICATIONS, INC.

By:   
Barbara Wellbery  
Vice President, Deputy General  
Counsel

BLACK ENTERTAINMENT TELEVISION, INC.

By:   
Maurita K. Coley  
Vice President, Legal Affairs